

ASSEMBLY BILL

No. 1077

Introduced by Assembly Member Wesson

February 20, 2003

An act to amend Sections 832.5 and 13012 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1077, as introduced, Wesson. Complaints against peace officers.

Existing law requires each department or agency in the state that employs peace officers, and authorizes each department or agency that employs custodial officers, to establish a procedure with specified guidelines to investigate complaints by members of the public against those officers.

This bill would require those complaint procedures to include a method for filing a complaint other than by personal appearance at a law enforcement location, including, but not limited to, by United States mail, electronic mail, telephone, or facsimile machine.

By requiring departments and agencies employing peace officers to include specified complaint reporting options in their required complaint procedures, this bill would impose a state-mandated local program.

Existing law requires the Department of Justice to present a report to the Governor annually containing the criminal statistics of the preceding year. Among the statistics the department is required to report are the total number of citizen complaints of officer misconduct received by law enforcement agencies, the number alleging conduct of either a felony or misdemeanor, and the number sustained in each

category. Existing law requires these statistics be reported by gross numbers only, and forbids reference to any individual agency.

This bill would require these statistics be reported in gross numbers, and by individual agency.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 832.5 of the Penal Code is amended to
2 read:

3 832.5. (a) (1) Each department or agency in this state that
4 employs peace officers shall establish a procedure to investigate
5 complaints by members of the public against the personnel of these
6 departments or agencies, and shall make a written description of
7 the procedure available to the public.

8 (2) Each department or agency that employs custodial officers,
9 as defined in Section 831.5, may establish a procedure to
10 investigate complaints by members of the public against those
11 custodial officers employed by these departments or agencies,
12 provided however, that any procedure so established shall comply
13 with the provisions of this section and with the provisions of
14 Section 832.7.

15 (3) *A procedure for receiving complaints by members of the*
16 *public as provided in this section must permit a method of filing*
17 *other than personal appearance at a law enforcement location,*
18 *including, but not limited to, by United States mail, electronic*
19 *mail, telephone, or facsimile machine.*



(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or

1 custodial officer's employment, including evaluations,
2 assignments, status changes, and imposed discipline.

3 (2) "Unfounded" means that the investigation clearly
4 established that the allegation is not true.

5 (3) "Exonerated" means that the investigation clearly
6 established that the actions of the peace or custodial officer that
7 formed the basis for the complaint are not violations of law or
8 department policy.

9 SEC. 2. Section 13012 of the Penal Code is amended to read:

10 13012. The annual report of the department provided for in
11 Section 13010 shall contain statistics showing all of the following:

12 (a) The amount and the types of offenses known to the public
13 authorities.

14 (b) The personal and social characteristics of criminals and
15 delinquents.

16 (c) The administrative actions taken by law enforcement,
17 judicial, penal, and correctional agencies or institutions, including
18 those in the juvenile justice system, in dealing with criminals or
19 delinquents.

20 (d) The administrative actions taken by law enforcement,
21 prosecutorial, judicial, penal, and correctional agencies, including
22 those in the juvenile justice system, in dealing with minors who are
23 the subject of a petition or hearing in the juvenile court to transfer
24 their case to the jurisdiction of an adult criminal court or whose
25 cases are directly filed or otherwise initiated in an adult criminal
26 court.

27 (e) The number of citizens' complaints received by law
28 enforcement agencies under Section 832.5. These statistics shall
29 indicate the total number of these complaints, the number alleging
30 criminal conduct of either a felony or misdemeanor, and the
31 number sustained in each category. The report shall ~~not contain a~~
32 ~~reference to any individual agency but shall be by gross numbers~~
33 *only contain statistics in gross numbers, and broken down by*
34 *individual agency.*

35 It shall be the duty of the department to give adequate
36 interpretation of the statistics and so to present the information that
37 it may be of value in guiding the policies of the Legislature and of
38 those in charge of the apprehension, prosecution, and treatment of
39 the criminals and delinquents, or concerned with the prevention of
40 crime and delinquency. The report shall also include statistics

1 which are comparable with national uniform criminal statistics
2 published by federal bureaus or departments heretofore
3 mentioned.

4 SEC. 3. Notwithstanding Section 17610 of the Government
5 Code, if the Commission on State Mandates determines that this
6 act contains costs mandated by the state, reimbursement to local
7 agencies and school districts for those costs shall be made pursuant
8 to Part 7 (commencing with Section 17500) of Division 4 of Title
9 2 of the Government Code. If the statewide cost of the claim for
10 reimbursement does not exceed one million dollars (\$1,000,000),
11 reimbursement shall be made from the State Mandates Claims
12 Fund.

